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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/623,402	07/18/2003	Michael R. Schwarz	CS-7890	4637

34469 7590 09/21/2005

BAYER CROPSCIENCE LP  
Patent Department  
100 BAYER ROAD  
PITTSBURGH, PA 15205-9741

EXAMINER
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CLARDY, S

ART UNIT	PAPER NUMBER
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1617

DATE MAILED: 09/21/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/623,402

Applicant(s)

SCHWARZ, MICHAEL R.

Examiner

S. Mark Clardy

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1617

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 08 August 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                                   | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>6/23/04; 8/8/05</u> .   | 6) <input type="checkbox"/> Other: _____                                    |

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Claims 1-16 are pending in this application.

Applicant's claims are drawn to methods of safening herbicidal phytotoxicity by coapplication of a chloronicotinyl insecticide. The safening insecticides include (see structures in claim 16) nitroguanidine insecticides (clothianidin, imidacloprid, thiomethoxam), nitromethylene insecticides (nitenpyram), and pyridylmethylaniline insecticides (acetamiprid, imidacloprid, nitenpyram, and thiacloprid). Classes of herbicides for which the safening method is claimed include the chloroacetamides, imidazolinones, oxyacetamides, sulfonylureas, triazines, triketones, and isoxazoles (claim 10).

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1-9 and 11-16 are rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for methods of safening the specifically disclosed classes of herbicides with chloronicotinyl insecticides, does not reasonably provide enablement for safening of herbicides in general. The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to practice the invention commensurate in scope with these claims.

The state of the prior art is such that all of the recited components are known in the plant protecting arts as insecticides and herbicides. It was further known that sulfonylurea herbicides antagonized the insecticides imidacloprid and bifenthrin on cabbage aphid and cabbage seedpod weevil in canola (Schneider et al, Abstract, 1998, IDS Ref AR). There is no disclosure of the insecticides antagonizing the herbicides in plants. The state of the herbicidal safening art is such

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that it is unpredictable whether any given combination of active agents will antagonize herbicidal phytotoxicity. The claims are broad inasmuch as they assert that the chloronicotinyl insecticides will antagonize any herbicide in any plant. There is scant direction or guidance presented in the specification. Working examples are absent, except by way of description of results. Extensive experimentation would be required for the ordinary artisan to determine whether any specific combination of chloronicotinyl insecticide, herbicide, and plant exhibits a safening effect on the herbicide.

Claim 10 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

No unobvious or unexpected results are noted; no claim is allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to S. Mark Clardy whose telephone number is 571-272-0611. The examiner can normally be reached on 7:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreenivasan Padmanabhan can be reached on 571-272-0629. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



S. Mark Clardy  
Primary Examiner  
Art Unit 1617

September , 2005